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10/584,997	05/01/2007	Gavriel Meron	P-6472-US1	5920
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EXAMINER DANIELS, ANTHONY J				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/584,997

Applicant(s)

MERON ET AL.

Examiner

ANTHONY J. DANIELS

Art Unit

2622

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 December 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24-26, 28, 31-39 and 42-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24-26, 28, 31-39 and 42-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-506)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(c), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(c) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/14/2009 has been entered.

Response to Arguments

1. Applicant's arguments with respect to the rejection under 35 U.S.C. 102(e) in view of Davidson et al. and the rejection under 35 U.S.C. 103(c) in view of Davidson et al. and Iddan et al. have been considered but are moot in view of the new ground(s) of rejection.
2. Applicant's invoking of 103(c) has successfully disqualified the Davidson et al. reference as prior art. However, the amendment to the independent claims has obviated the 35 U.S.C. 102(e) rejection in view of Davidson et al.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection

is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

1. Claims 24,26,28,34,35,38,39,43 and 48 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-5,7,8,10-12 and 14 of copending Application No. 2006/0164511.

Conflicting Claims

<u>10/554,397 (Present Application)</u>	<u>11/358,401</u>
24	1 and 4
26	7 and 8
28	5
34	10 and 12
35	11
38	14
39	1,2 and 4
43	5
48	3

Although the conflicting claims are not identical, they are not patentably distinct from each other because the sorting discussed in 11/358,401 is the same as the scoring and spatial positioning in ascending and descending order in 10/544,997. Furthermore, the claims of 11/358,401 recite comparing images to another selected image, not explicitly referred to as a reference image, essentially acting as a reference image.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various

claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 24-26,28,33-37,39,43 and 45-48 rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al. (US 2005/0075537) in view of Foran et al. (US # 7,027,633).

As to claim **24**, Chen et al. teaches a method for displaying frames from an in vivo image stream (Figure 4, CRT display "404"), said method comprising: assigning a score to each of a plurality of frames based on a degree of variation ([0036]; *{The examiner interprets a score as a match.}*) of a predetermined criterion ([0036], Lines 1-3, "...Image features such as color...") of each frame ([0036], Lines 3-5, "...segmented regions of the GI tract image...") and a reference frame (Figure 4, predetermined templates "534"; [0036], Lines 7-9). Chen et al. does not detail how the in vivo GI tract images are displayed. In this regard, Chen et al. fails to disclose the step of displaying at least a subset of the plurality of frames from the in vivo stream substantially simultaneously, wherein the subset of frames are positioned spatially in order of ascending or descending degree of variation based on the score assigned thereto.

In the same field of endeavor, Foran et al. teaches a collaborative diagnostic system including tools for computer-assisted evaluation of objective characteristics of pathologies (Figures 4 and 5). The system includes a computer workstation including a user interface (Figure 6, user interface “600”) which displays substantially simultaneously matched images (Figure 6, matched images “608”) along with metadata (Figure 6, “Retrieval 1...”, “Retrieval 2...”, etc.) in order of similarity (Col. 18, Lines 4-9) to a reference frame (Figure 6, image “602”). In light of the teaching of Foran et al., it would have been obvious to one of ordinary skill in the art to include the ability to display the images matching the predetermined templates along with the metadata of Chen et al. in the manner of Foran et al., because this would allow for improved diagnostic accuracy and early detection for pathologies (see Foran et al., Col. 2, Lines 20-23).

As to claim **25**, Chen et al., as modified by Foran et al., teaches the method according to claim 24 comprising displaying the in vivo image stream as a multi-frame image stream (see Chen et al., Figure 4; see Foran et al., Figure 6).

As to claim **26**, Chen et al., as modified by Foran et al., teaches the method according to claim 24 comprising adjusting a rate at which the multi-frame image stream is displayed based on the content of the frames (see Chen et al., [0046]; *{The image stream is adjusted by thresholding the color feature matching. Without the color feature detection, all images of the in vivo stream will be displayed.}*).

As to claim **28**, Chen et al., as modified by Foran et al., teaches the method according to claim 24 wherein the score is assigned based on a degree of color variation of the displayed frames as compared to the reference frame (see Chen et al., [0036]).

As to claim **33**, Chen et al., as modified by Foran et al., teaches the method according to claim 24 comprising displaying sensor data from a sensor other than an image sensor substantially simultaneously as the frames from the in vivo image stream (see Chen et al., Figure 2A; [0030]).

As to claim **34**, Chen et al. teaches a system for displaying frames of an in vivo image stream (Figure 4, CRT display “404”), the system comprising: an in vivo imaging device (Figure 1, capsule “112”; [0034], Lines 4-7) to transmit an in vivo image stream (Figure 1, image transmitter “106”); a processor (Figure 4, examination bundle processor “402”) to assign a score to each of a plurality of frames based on a degree of variation ([0036]; *{The examiner interprets a score as a match.}*) of a predetermined criterion ([0036], Lines 1-3, “...Image features such as color...” of each frame ([0036], Lines 3-5, “...segmented regions of the GI tract image...” and a reference frame (Figure 4, predetermined templates “534”; [0036], Lines 7-9). Chen et al. does not detail how the in vivo GI tract images are displayed. In this regard, Chen et al. fails to disclose a display to display a multi-frame image stream, wherein each multi-frame image thereof displays at least a subset of the plurality of frames substantially simultaneously, wherein the subset of frames are positioned spatially in order of ascending or descending degree of variation based on the score assigned thereto.

In the same field of endeavor, Foran et al. teaches a collaborative diagnostic system including tools for computer-assisted evaluation of objective characteristics of pathologies (Figures 4 and 5). The system includes a computer workstation including a user interface (Figure 6, user interface “600”) which displays substantially simultaneously matched images (Figure 6, matched images “608”) along with metadata (Figure 6, “Retrieval 1...”, “Retrieval 2...”, etc.) in

order of similarity (Col. 18, Lines 4-9) to a reference frame (Figure 6, image “602”). In light of the teaching of Foran et al., it would have been obvious to one of ordinary skill in the art to include the ability to display the images matching the predetermined templates along with the metadata of Chen et al. in the manner of Foran et al., because this would allow for improved diagnostic accuracy and early detection for pathologies (see Foran et al., Col. 2, Lines 20-23).

As to claim 35, Chen et al., as modified by Foran et al., teaches the system of claim 34 wherein the in vivo imaging device is an autonomous capsule (see Chen et al., Figure 1, capsule “112”; [0034], Lines 4-7, “...swallowed capsule...”).

As to claim 36, Chen et al., as modified by Foran et al., teaches the system of claim 34 comprising a pH sensor (see Chen et al., [0030], Lines 9-15, “...non-image sensed characteristics such as pH...”).

As to claim 37, Chen et al., as modified by Foran et al., teaches the system of claim 34 wherein the score is assigned based on data detected by a sensor (see Chen et al., Figure 1, camera “104”; *{The match is determined by the image features which are captured by the camera.}*).

As to claim 39, Chen et al. teaches a method for displaying frames from an in vivo image stream (Figure 4, CRT display “404”), the method comprising: selecting a plurality of frames from an in vivo image stream (Figure 3, IN VIVO RF TRANSMITTER “306”; *{The examiner interprets the images that are transmitted as selected.}*); assigning a score to each of a plurality of frames based on a degree of variation ([0036]; *{The examiner interprets a score as a match.}*) of a predetermined criterion ([0036], Lines 1-3, “...Image features such as color...”) of each frame ([0036], Lines 3-5, “...segmented regions of the GI tract image...”) and a reference frame

(Figure 4, predetermined templates “534”; [0036], Lines 7-9). Chen et al. does not detail how the in vivo GI tract images are displayed. In this regard, Chen et al. fails to disclose the step of displaying at least a subset of the plurality of frames from the in vivo stream substantially simultaneously, wherein the subset of frames are positioned spatially in order of ascending or descending degree of variation based on the score assigned thereto.

In the same field of endeavor, Foran et al. teaches a collaborative diagnostic system including tools for computer-assisted evaluation of objective characteristics of pathologies (Figures 4 and 5). The system includes a computer workstation including a user interface (Figure 6, user interface “600”) which displays substantially simultaneously matched images (Figure 6, matched images “608”) along with metadata (Figure 6, “Retrieval 1...”, “Retrieval 2...”, etc.) in order of similarity (Col. 18, Lines 4-9) to a reference frame (Figure 6, image “602”). In light of the teaching of Foran et al., it would have been obvious to one of ordinary skill in the art to include the ability to display the images matching the predetermined templates along with the metadata of Chen et al. in the manner of Foran et al., because this would allow for improved diagnostic accuracy and early detection for pathologies (see Foran et al., Col. 2, Lines 20-23).

As to claim 43, Chen et al., as modified by Foran et al., teaches the method according to claim 39 wherein the score is assigned based on color variation of the plurality of frames as compared to the reference frame (see Chen et al., [0036]).

As to claim 45, Chen et al., as modified by Foran et al., teaches the method according to claim 24 wherein the reference frame represents a pathology (see Chen et al., [0036], Lines 7-9, “...statistical representations of GI tract abnormalities...”) and wherein frames having a low

degree of variation with respect to the reference frame ([0036], Lines 9-13, matches have low degrees of variation) are displayed (see Foran et al., Figure 6, matched images “608”).

As to claim **46**, Chen et al., as modified by Foran et al., teaches the method according to claim 24 comprising selecting or generating the reference frame (see Chen et al., Figure 6, predetermined templates are generated somehow).

As to claim **47**, Chen et al., as modified by Foran et al., teaches the method according to claim 46 wherein selecting or generating the reference frame is based on the frames to be displayed (see Chen et al., [0036]; *{The system generates the predetermined templates of the GI tract due to the fact that the displayed frames are taken in the GI tract.}*).

As to claim **48**, Chen et al., as modified by Foran et al., teaches the method according to claim 24 wherein the predetermined criterion is selected from the group consisting of: color (see Chen et al., [0036], Lines 1-3, "...Image features such as color..."), shape features, focusing, lighting, blood detection, and image content which may not be associated with a pathology.

2. Claim 31 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al. (US 2005/0075537) in view of Foran et al. (US # 7,027,633) and further in view of Balabanovic et al. (US # 6,976,229).

As to claim **31**, Chen et al., as modified by Foran et al., teaches the method according to claim 24. The claim differs from Chen et al., as modified by Foran et al. in that it further requires the step of adjusting the size of at least one of the frames displayed based on the assigned scores.

In the same field of endeavor, Balabanovic et al. teaches a method of displaying image frames wherein a user can select an image frame from a plurality of grouped images in order to

enlarge the frame for viewing (Figure 1, large image "120" and thumbnail images of tracks "105", "110" and "115"). In light of the teaching of Balabanovic et al., it would have been obvious to one of ordinary skill in the art to include the ability to enlarge a displayed image in the system of Foran et al., because an artisan of ordinary skill in the art would recognize that this would allow a physician to get a better view of a potentially abnormal frame of the GI tract.

As to claim **42**, Chen et al., as modified by Foran et al. and Balabanovic et al., teaches the method according to claim 39 wherein at least two of the plurality of frames are displayed having different sizes (Figure 1, large image "120" and thumbnail images of tracks "105", "110" and "115").

3. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al. (US 2005/0075537) in view of Foran et al. (US # 7,027,633) and further in view of Shibamura (US # 5,642,157).

As to claim **32**, Chen et al., as modified by Foran et al., teaches the method according to claim 24. The claim differs from Chen et al., as modified by Foran et al., in that it further requires that the in vivo image stream includes frames captured from more than one image sensor.

In the same field of endeavor, Shibamura teaches a system including an endoscope apparatus used in combination with another medical diagnostic imaging device in which video signals from both devices can be displayed simultaneously or can be switched between on a display device (Figures 5A and 5B; Col. 2, Lines 44-52). In light of the teaching of Shibamura, it would have been obvious to one of ordinary skill in the art to include the ability to display

multiple frames from multiple sensors in the system of Chen et al., as modified by Foran et al., because this would allow for an improved image display technique (see Shibamura, Col. 1, Lines 7-11)

4. Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al. (US 2005/0075537) in view of Foran et al. (US # 7,027,633) and further in view of Iddan et al. (US # 6,764,440).

As to claim 38, Chen et al., as modified by Foran et al., teaches the system of claim 34. The claim differs from Chen et al. in that it further requires that the processor is to adjust the stream rate of the multi-frame image stream.

In the same field of endeavor, Iddan et al. teaches a method for energy management of a video capsule wherein in order to save power; and consequently, reduce a stream rate of captured images, a control unit discontinues the power supply of the capsule in order to prevent the capture of redundant images according to the axial movement of the capsule (Figures 1 and 2; Col. 3, Lines 7-17). In light of the teaching of Iddan et al., it would have been obvious to one of ordinary skill in the art to include this energy management method in the system of Chen et al., because an artisan of ordinary skill in the art would recognize that this would save power and, by reducing the capture of redundant images, allow for better diagnostics as redundant images may lead a physician to confusion.

5. Claim 44 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al. (US 2005/0075537) in view of Foran et al. (US # 7,027,633) and further in view of Bille (US 2005/0110948).

As to claim **44**, Chen et al., as modified by Foran et al., teaches the method according to claim 24. The claim differs from Chen et al., as modified by Foran et al., in that it further requires that the reference frame represents healthy tissue and wherein frames having a high degree of variation with respect to the reference frame are displayed to represent pathologies.

In the same field of endeavor, Bille teaches an imaging system for diagnostically evaluating the health of tissue, wherein an in vivo image of tissue is acquired and compared to a template representing healthy tissue (Figure 1; Col. 6, Lines 27-35). In light of the teaching of Chen et al., as modified by Foran et al., it would have been obvious to one of ordinary skill in the art to use healthy normal GI tract images as templates when performing feature matching in the system of Chen et al., because as a supplement, this would provide allow higher quality abnormality detection and by itself, may be more appropriate for abnormality detection in different lighting situations.

Conclusion

1. Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANTHONY J. DANIELS whose telephone number is (571)272-7362. The examiner can normally be reached on 8:00 A.M. - 5:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh Tran can be reached on (571) 272-7564. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sinh Tran/
Supervisory Patent Examiner, Art Unit
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